

This response was submitted to the consultation held by the Nuffield Council on Bioethics on the Forensic use of bioinformation: ethical issues between November 2006 and January 2007. The views expressed are solely those of the respondent(s) and not those of the Council.

Ethics Committee, Royal College of Pathologists

List of questions

The Ethics Committee of the Royal College of Pathologists wishes to make the following comments to the listed questions:

1. The interpretation of bioinformation

- a. In your view, is the SGM Plus[®] system, which uses ten STR markers, sufficiently reliable for use in ascertaining the identity of suspects in criminal investigations and/or criminal trials?

It is recognized that a "state-of-the-art" system will be used to ascertain the identity of suspects in criminal investigations and/or criminal trials. It is essential that the limitations of each system are fully recognized and that quality assurance protocols are in place, since any failure of process is likely to have serious consequences. For these reasons, it is desirable that supporting evidence should be available before DNA evidence is used to secure a conviction.

2. Sampling powers

- a. From whom should the police be able to take fingerprints and DNA samples? At what stages in criminal investigations and for what purposes? Should the police be able to request further information from DNA analysts, such as physical characteristics or ethnic inferences?
- b. Should police expenditure on bioinformation collection and analysis be given priority over other budgetary demands?
- c. Do you consider the current criteria for the collection of bioinformation to be proportionate to the aims of preventing, investigating, detecting and prosecuting criminal offences? In particular: is the retention of bioinformation from those who are not convicted of an offence proportionate to the needs of law enforcement?
- d. Is it acceptable for bioinformation to be taken from minors and for their DNA profiles to be put on the NDNAD?

The Ethics Committee did not feel able to address the issue of sampling powers.

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3. The management of the NDNAD

- a. Is it proportionate for bioinformation from i) suspects and ii) volunteers to be kept on forensic databases indefinitely? Should criminal justice and elimination samples also be kept indefinitely? How should the discretion of Chief Constables to remove profiles and samples from the NDNAD be exercised and overseen?
- b. Is the ethical oversight of the NDNAD adequate? What, if any, research on NDNAD profiles or samples should be permitted? Who should be involved in the oversight of such databases and granting permission to use forensic DNA profiles or samples for research?
- c. Who should have access to information on the NDNAD and IDENT1 databases and how should bioinformation be protected from unauthorised uses and users? Should forensic databases ever be made available for non-criminal investigations, such as parental searches, or the identification of missing or deceased persons?
- d. What issues are raised by the transfer of bioinformation between agencies and countries? How should such transfers be facilitated and what safeguards should be in place for the storage and use of transferred data?

The Ethics Committee supports the Home Office decision to establish an Ethics Committee to advise the NDNAND Strategy Board. The first duty might be to establish Terms of Reference and to clarify what powers will be given to regulate proposed uses of the database and research proposals. It is important to establish the Committee's independence and to enable it to give authoritative advice on the matters outlined in questions 3 (a) – (d).

The Committee might also determine what type of research will, in principle, be permitted. If the field of proposed research is related to the NHS then it would be for existing Research Ethics Committees (RECs) to scrutinise and approve or reject specific proposals.

For research unrelated to the NHS, it might be appropriate to create a separate independent Research Ethics Committee for this purpose.

4. Ethical issues

- a. Is the use of DNA profiles in 'familial searching' inquiries proportionate to the needs of criminal investigations? Do you consider the use of familial searching may be an unwarranted invasion of family privacy?
- b. Certain groups, such as ethnic minorities and young males, are disproportionately represented on forensic databases. Is this potential for bias within these databases acceptable?

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- c. Is it acceptable that volunteers (such as victims, witnesses, mass screen volunteers) also have their profiles retained on the NDNAD? Should consent be irrevocable for individuals who agree initially to the retention of samples voluntarily given to the police? Are the provisions for obtaining consent appropriate? Should volunteers be able to withdraw their consent at a later stage?

If consent is freely given, then it should be possible also to withdraw it. If, on the other hand, there is a compulsory national database, then the question does not arise. The Ethics Committee was attracted to the Scottish solution, outline in footnote 47, as being a sensible way forward.

- d. Would the collection of DNA from everyone at birth be more equitable than collecting samples from only those who come into contact with the criminal justice system? Would the establishment of such a population-wide forensic database be proportionate to the needs of law enforcement? What are the arguments for and against an extension of the database?

5. The evidential value of bioinformation

- a. What should be done to ensure that police, legal professionals, witnesses and jury members have sufficient understanding of any forensic bioinformation relevant to their participation in the criminal justice system?

It is essential that those managing the forensic bioinformation have been appropriately educated and trained. This includes a proper understanding of the limitations of the tests performed, including the potential risks of sample contamination or failure of correct identification and/or sample transposition (in addition to the known, if remote, risk of the system itself providing an incorrect result).

This is also an appropriate place to note that any presumption of a relationship between physical appearance and genetic profile is not scientifically secure and is likely to become rapidly less secure as the cosmopolitan nature of society in the United Kingdom continues to grow through mixing of the gene pool.

- b. How much other evidence should be required before a defendant can be convicted in a case with a declared DNA match? Should a DNA match ever be taken to be sufficient to prove guilt in the absence of other evidence?

The Ethics Committee is not in a position to judge how much other evidence should be required before a defendant can be convicted in a case with a declared DNA match but the uncertainty surrounding the results of laboratory tests, in general, has already been pointed out.

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6. Other issues

- a. Are there any other issues, within our terms of reference, which we should consider?

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